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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 PETER T. HARRELL,

11 Plaintiff,

No. CIV S-05-0420 GEB CMK

12 vs.

13 DARREL LEMOS, et al.,

14 Defendants.

ORDER

15 _____/
16 Mr. Harrell, who is proceeding without counsel and in forma pauperis, has filed
17 this civil rights action against defendants. He alleges various federal and civil rights violations
18 stemming from an August 22, 2003 arrest. This case came on for hearing on defendant Merrill's
19 and defendant Riggins's motion to dismiss on October 26, 2006. Phillip B. Price appeared on
20 behalf of defendants; Mr. Harrel appeared on his own behalf.

21 During the course of the hearing, it became clear based on the statements of both
22 Mr. Harrell and Mr. Price that criminal charges stemming from plaintiff's August 22, 2003 arrest
23 are currently pending against plaintiff.¹ The court also discussed plaintiff's failure to specifically
24 allege compliance with the requirements of the California Government Tort Liability Act.

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26 ¹Both parties agreed that at the time plaintiff filed this complaint, March 3, 2005, the
charges against plaintiff had been dismissed. The charges were subsequently re-filed.

1 In order to recover damages for allegedly unconstitutional conviction or
2 imprisonment, or for other harm caused by actions whose unlawfulness would render a
3 conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has
4 been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal
5 authorized to make such a decision, or called into question by a federal court's issuance of a writ
6 of habeas corpus. See Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). A claim for damages
7 bearing that relationship to a conviction or sentence that has not been so invalidated is not
8 cognizable under § 1983.

9 Prior to bringing suit for damages against a public entity, a plaintiff must prove
10 presentation of the claim to the appropriate public entity, which must have resolved it. See Cal.
11 Gov. Code §§ 911.2, 915, 945.4. A claim must be presented to the appropriate public entity not
12 later than six months after the accrual of the cause of action. See id. § 911.2. This serves to give
13 the public entity prompt notice of a claim so that it may investigate the strengths and weaknesses
14 of a the claim while the evidence is still fresh and witnesses are available, affords an opportunity
15 for amicable adjustment, and informs the public entity of potential liability so it can better
16 prepare for the fiscal year. See Renteria v. Junenile Justice Dep't. of Corrections, 135 Cal. App.
17 4th 903 (Cal. App. 2006). Because plaintiff's suit is against a public entity and public
18 employees, he must allege that he presented a timely claim to the County of Siskiyou and
19 Siskiyou County's Board of Supervisors acted on that claim. See See Cal. Gov. Code §§ 945.4,
20 950.2 and 950.6.

21 At the hearing, plaintiff averred that he had presented his claim to the Siskiyou
22 County Board of Supervisors on May 12, 2004. However, plaintiff fails to make any such
23 allegations in his complaint. Moreover, the court notes that May 12, 2004 is more than six
24 months after the September 23, 2003 arrest, which is when plaintiff's cause of action accrued.
25 Plaintiff's notion of adding the oblique language of "timely communicated notice" is of no
26 assistance to him, and certainly not to the court in the ultimate resolution of his dispute since

1 “timely” is not a subjective standard.

2 Accordingly, the court declines to rule on defendants’ motion to dismiss at this
3 time. Instead, the court will order plaintiff to file an amended complaint which addresses the
4 afore mentioned deficiencies.

5 IT IS ORDERED that:

6 1. Plaintiff, Peter Harrell, shall have fifteen days from the date this order is filed
7 within which to file an amended complaint alleging that:


8 a. The criminal charges against him stemming from the September 23,
9 2003 arrest have been dropped or resolved in his favor and;

10 b. He has complied with the aforementioned requirements of California’s
11 Governmental Tort Liability Act, by specifically attaching as an Exhibit to the amended
12 complaint a copy of his claim satisfying the requirements of Gov. Code §§ 910, et seq.

13 2. If plaintiff fails to do so, the court will dismiss plaintiff’s complaint, without
14 prejudice, for failure to state a claim upon which relief may be granted.

15 3. The court will consider defendants’ motion to dismiss after the filing of any
16 amended complaint or expiration of time to file such.

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18 DATED: October 27, 2006.

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21 **CRAIG M. KELLISON**
22 UNITED STATES MAGISTRATE JUDGE
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